



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Rusty Renfroe, CLA
City Attorney's Office
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR95-1550

Dear Mr. Renfroe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37161.

The City of Longview (the "city") received a request for "routine, on-going, access to the police department's daily dispatch logs."¹ You contend that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.108 excepts records from required public disclosure only where the release of the information would "unduly interfere" with law enforcement or prosecution. Open Records Decision Nos. 434 (1986), 287 (1981). When this section is raised, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how the release of the information would unduly interfere with law enforcement. Open Records Decision No. 287 (1981). Whether disclosure of particular records will unduly interfere with law enforcement must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). You have not demonstrated, nor is it apparent from the face of the documents, how the release of this information would unduly interfere with law enforcement.

¹We agree with your contention that the Open Records Act does not require a governmental body to comply with a standing request for information to be collected or prepared in the future. See Attorney General Opinion JM-48 (1983). However, because there is nothing to prevent the requestor from making daily requests for newly created dispatch logs, we will rule on the records you have submitted to this office as being representative of the types of records the requestor may seek in the future.

We further note that in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See also Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle Publishing Co.*). Similarly, we conclude that none of the requested information may be withheld pursuant to section 552.108.

We next address your contentions under section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You suggest that this office apply the same legal analysis to the dispatch records as that used by the court in *Direct Mail Marketing, Inc. v. Morales*, No. H-95-4234 (S.D. Tex. Oct. 5, 1995). In *Direct Mail Marketing, Inc.*, the court addressed the constitutionality of House Bill 391, which places certain restrictions on public access to "all accident reports made as required by [V.T.C.S. art. 6701d] or [V.T.C.S. art. 6701h]." See Act of May 27, 1995, 74th Leg., R.S., ch. 894, 1995 Tex. Sess. Law Serv. 4413 (to be codified as an amendment to V.T.C.S. art. 6701d, § 47). The court held that the proposed amendment to article 6701d was not unconstitutional and thus denied the application for a preliminary injunction against enforcement of the amendment.

However, House Bill 391 restricts public access only to certain accident reports, and not to police dispatch logs such as those at issue here. Consequently, the court ruling in *Direct Mail Marketing, Inc.*, has no bearing on whether the public may have access to the type of records being sought by the requestor.

You also contend that dispatch information concerning sexual assault victims, juveniles, and other information that has been deemed excepted under common-law privacy may be withheld from required public disclosure. We generally agree that any dispatch information involving "delinquent conduct" or "conduct indicating a need of supervision" of a juvenile must be withheld from the general public pursuant to section 51.14(d).² See also Fam. Code § 51.14(c) (stating that all "law-enforcement files and records concerning a child shall be kept separate from files and records of arrests of adults").³ But see *id.* § 51.03 (excluding information pertaining to routine juvenile traffic violations from confidentiality provisions).

²We note that in the recent legislative session, the Seventy-fourth Legislature repealed section 51.14 of the Family Code, effective January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 100, 105, 106, 1995 Tex. Sess. Law Serv. 2517, 2590-91 (Vernon). We do not address the effect of the legislature's action on requests made after January 1, 1996.

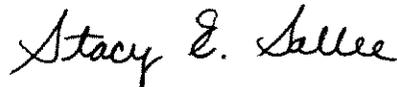
³We do not address here whether juvenile and adult dispatch information may properly be recorded together.

We note that information concerning investigations into the abuse or neglect of a child is made confidential by law. Act of May 26, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3888, 3924 (to be codified as Fam. Code § 261.201(a)). Accordingly, any information concerning an investigation into the abuse or neglect of a child is confidential and must be withheld from public disclosure. We also note that criminal history record information is excepted from required public disclosure as confidential information as a matter of law. Gov't Code § 411.084.

Finally, you suggest that some dispatch information may be protected under common-law privacy, such as, information concerning a victim of sexual assault or abuse. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information concerning victims of sexual assault or abuse is generally protected from disclosure by common-law privacy,⁴ you have not explained how the limited type of information contained in the dispatch records would meet this test. After reviewing the records submitted to this office, we conclude that none of the information contained in these records may be withheld under common-law privacy without additional briefing. See Open Records Decision No. 394 (1983) at 4 ("Questions relating to the application of the common law right of privacy are necessarily factual in nature and can only be resolved on a case-by-case basis.").

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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⁴Open Records Decision Nos. 440 (1986) (investigations regarding sexual abuse of children excepted under common-law privacy), 393 (1983) (identifying information of victim of serious sexual offense excepted under common-law privacy), 339 (1982) (detailed description of aggravated sexual abuse raises issue of common-law privacy; name of victim of serious sexual offense excepted under common-law privacy).

Ref: ID# 37161

Enclosures: Submitted documents

cc: Mr. Larry J. Laurent
Two Cielo Center, Suite 400
1250 South Capital of Texas Highway
Austin, Texas 78746
(w/o enclosures)